Supreme Court, U.S.
FILED
MAY 8 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

No. 79-1186

ORVILLE E. DENNIS,
Petitioner

v.

SIDNEY SPARKS and R. L. LYND,
d/b/a SIDNEY SPARKS, TRUSTEE,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

Petition for Certiorari Filed February 1, 1980

Certiorari Granted March 24, 1980

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RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

1/6/76	Plaintiffs' Original Complaint filed. Summons issued and handed to U.S. Marshal.
1/27/76	Answer of Defendant O. P. Carrillo filed.
1/28/76	Motions to dismiss, Original Answer and Cross-Claim of Defendant Orville E. Dennis.
2/2/76	Defendant O. P. Carrillo's Motion to Disqualify Attorney Garland F. Smith filed.
2/2/76	Answer of Defendants Duval County Ranch Company, Inc. and Clinton Manges filed.
2/5/76	Motion of Defendant Clarence Martens to adopt Pleadings, filed.
2/9/76	Answer of Garland F. Smith to Motion of Defendant O. P. Carrillo to Disqualify Attorney, filed.
2/9/76	Plaintiff's Answer to the Motion of Defendant Orville E. Dennis to dismiss, filed.
2/23/76	First Amended Motion to Dismiss of Defendant Duval County Ranch Co., Inc., and Clinton Manges, filed.
2/25/76	Defendant Dennis First Amended Motions to Dismiss, filed.
4/8/76	Plaintiff's Motion for Leave to amend complaint, filed.
4/15/76	Defendant Manges Objection to request for Amendment & Motion to dismiss filed.

4/27/76	Defendant Dennis's objection to Plaintiff's Motion for Leave to amend complaint, filed.
5/3/76	Clarence Martens' Objection to Plaintiff's Motion for Leave to amend complaint, filed.
9/3/76	PRE-TRIAL CONFERENCE set for October 22, 1976 at 11:a.m.
10/22/76	PRE-TRIAL CONF. HELD—inter alia, Motion to dismiss is under advisement and Court granted Plaintiff leave amend complaint.
10/26/76	Plaintiffs' First Amended Complaint, filed.
10/29/76	Defendant's Answer to Plaintiff's First Amended Petition filed.
11/1/76	Defendant's Amended Motions to Dismiss First Amended Original Answer and First Amended Cross-Claim (Deft. Orville Dennis).
12/17/76	ORDER, filed (Motion to Dismiss is granted as to all defendants).
12/20/76	JUDGMENT, filed (Case is dismissed as to ORDER entered on 12/17/76).
1/17/77	Plaintiffs' Notice of Appeal, filed (due 2/21/77).
1/25/77	Cost Bond on appeal (cash deposit), filed.
2/1/77	Plaintiffs' Designation of Contents of record, filed.
2/14/77	Appellee, Orville E. Dennis' Designation of Instruments, filed.
2/18/77	Record mailed to Ct. of Appeals. /ns

RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

2/2/77	Dup. Notice of Appeal and Clerk's Statement of Docket Entries
2/24/77	Record on Appeals (1 vol.)
4/5/77	Appendix (M)
4/5/77	Brief for Appellants (M)
4/28/77	Brief for Appellee (M) O. P. Carrillo
5/9/77	Brief for Appellee (M) Dennis
5/13/77	Letter 5/9/77 appellees', Duval County Ranch and Clinton Manges, adopting briefs of Carrillo and Dennis
5/17/77	Filing letter dated 5/13/77 advising that Clarence Martens adopts briefs of O. P. Carrillo and Orville E. Dennis
4/5/78	Filing Letter dated 4/3/78 of appellee O. P. Carrillo calling attention of recent U. S. Supreme Court decision
5/22/78	Reply Brief for Appellant
9/29/78	Filing motion of appellee, Clinton Manges, to waive oral argument and to adopt argument of appellees, O. P. Carrillo and Orville E. Dennis
10/4/78	Filing Order GRANTING motion of appellee, Clarence Martens, to waive oral argument and adopt argument of other defendants-appellees (JCG)

10/5/78	Filing Order GRANTING motion of appellee, Clinton Manges, to waive oral argument and adopt argument of appellees, O. P. Carrillo and Orville E. Dennis (JCG)
10/6/78	Filing Amended motion of Duval County Ranch to waive oral argument and adopt oral argument of other defendants
10/9/78	Filing Order GRANTING amended motion of appellee, Duval County Ranch Company, to waive oral argument and to adopt the argument of other defendants (JCG)
10/18/78	Post Submission Brief for Appellee (J) for Carrillo
10/26/78	Flg. Reply of Appellants to Post Submission Brief of O. P. Carrillo (M) (J).
10/27/78	Flg. Appellant's motion to file reply of appellants to post submission brief of O. P. Carrillo (GRANTED—BWS)
1/17/79	Opinion Rendered, affirmed, P.C.
2/2/79	Bill of Costs
3/9/79	Filing Order on the Court's own motion granting that the case be heard en banc with oral argument.
3/9/79	REPORTED REOPENED TO A.O.
4/4/79	Supplemental Brief for Appellants on Rehearing en banc
5/15/79	Filing Letter from counsel for Duval County Ranch Co., Inc. adopting brief of appellees and adopting oral argument (SEND TO PANEL) (CE)

5/7/79	Supplemental Brief for Appellee (Dennis) on rehearing en banc
5/29/79	Reply Brief for Appellants on Rehearing en banc (J)
6/5/79	MINUTE ENTRY: THIS CASE WAS HEARD EN BANC TODAY BEFORE: HONS. BROWN, Chief Judge, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, CLARK, RONEY, GEE, TJOFLAT, HILL, FAY, RUBIN, VANCE, and KRAVITCH. ARGUED BY GARLAND F. SMITH FOR APPELLANTS. ARGUED BY FINLEY L. EDMONDS FOR APPELLEES. SEE LETTERS OF 3-22-79, 5-15-79, & 5-24-79 for additional information.
11/5/79	Petition for Rehearing (M)(J)—Appellee Orville E. Dennis—Reg.
11/5/79	Bill of Costs
12/10/79	Amicus Curiae (Judge Coker) (Granted 12/14/79)
12/14/79	Order Denying Rehearing—Dennis
12/20/79	Stay of Mandate (Granted 2/2/80)
2/8/80	Notice of Flg. of Cert. Pet. on 2/1/80—Dennis
3/17/80	Notice of filing Cert.
3/28/80	Order of S.C., Petition for Certiorari Granted 3/24/80
3/31/80	Order of S.C., Petition for Certiorari Denied 3/24/80 (79-1239 only)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION
CORPUS CHRISTI, TEXAS

CIVIL ACTION NO. 76-C-2

SIDNEY A. SPARKS, R. L. LYND, d/b/a
SIDNEY A. SPARKS, TRUSTEE, Plaintiffs

VS.

DUVAL COUNTY RANCH COMPANY, INC.
CLINTON MANGES, CLARENCE MARTENS,
ORVILLE E. DENNIS and O. P. CARRILLO,
Defendants

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COME SIDNEY A. SPARKS and R. L. LYND, doing business as SIDNEY A. SPARKS, Trustee, hereinafter called Plaintiffs, complaining of DUVAL COUNTY RANCH COMPANY, INC., hereinafter called DCRC; CLINTON MANGES, hereinafter called MANGES; CLARENCE MARTENS and ORVILLE E. DENNIS, hereinafter called MARTENS and DENNIS; and O. P. CARRILLO, hereinafter called CARRILLO, and would respectfully show unto this Honorable Court the following:

FIRST CAUSE OF ACTION

Jurisdiction

I.

This action arises under Section 1 of the *Civil Rights Act* of 1871, 17 Stat. 13, 42 USC 1983. The jurisdiction of this Court is grounded upon 28 USC 1343.

Venue

II.

Venue is proper in the Corpus Christi Division of the Southern District of Texas since the acts complained of occurred in such Division and since the Plaintiffs and all but one of the defendants reside in such Division of such District.

III.

This is an action for damages brought pursuant to 42 USC 1983 for deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States, such deprivation having occurred under color of State law and by virtue of a conspiracy entered into and carried out by acts, in concert, of Defendant MANGES, acting by and through the DCRC, his solely owned corporation and alter ego, and Defendants CARRILLO, DENNIS and MARTENS.

IV.

This suit arises out of the well-known corruption which has, in the past, permeated every level of local government in Duval County, Texas, including the judiciary, of which Plaintiffs ask this Court to take judicial notice. In fact, Plaintiffs verily believe and allege that this case could not have arisen in any other County in the State of Texas where the ideal of "a government of laws and not men" is more closely observed, and it is primarily because of the corruption in office prevalent in Duval County that a federal forum is appropriate in this case. As will be more specifically pled hereafter, this case concerns efforts by Defendant MANGES to

terminate a valid oil, gas and mineral lease owned and operated by these Plaintiffs, which effort was only a small part of a larger effort to terminate all oil, gas and mineral leases on land owned by DCRC. Because MANGES sought to accomplish this objective by bribery and official corruption, as will be more specifically pled hereafter, MANGES' actions acquired the character and authority of "state action", because carried out and effected under the color of law by his co-conspirator, CARRILLO.

V.

Defendant MANGES, shortly after he acquired complete stock ownership of Defendant DCRC, found the land to be burdened with numerous oil, gas and mineral leases which MANGES was desirous of terminating so that he could either lease the same upon more favorable terms, or develop the minerals himself. MANGES determined to stop production under such leases and thus cause such leases to be terminated under the provisions of the "non-production clause" common to most oil, gas and mineral leases in Texas.

VI.

To stop production under such leases, MANGES foresaw that he needed the help of a friendly Judge, one who would rule as MANGES wished him to rule. To that end, MANGES supported O. P. CARRILLO in his efforts to be elected Judge of the 229th District Court of Duval County, Texas. MANGES' support for CARRILLO, however, went further than the normal and usual political support for a candidate and, after CARRILLO had been elected, MANGES undertook to place

CARRILLO heavily in his debt, and bestowed numerous gifts, favors, and things of value upon CARRILLO, some of which were as follows:

1. Carrillo was elected Judge of the 229th District Court of Duval County, Texas in November of 1970. On or about December 10, 1970, Defendant Manges, who had acquired controlling interest in the First State Bank & Trust Company, Rio Grande City, Texas, transferred to Carrillo qualifying shares of stock in said bank and made Carrillo a Director in the Bank, and in January of each year thereafter, during the pendency of the litigation involving the Plaintiffs herein, caused Judge Carrillo to be reelected to the Board of Directors. The bank, during this period, paid Directors fees in the sum of $50.00 per month to each Director.

2. Prior to December 31, 1972, Manges, as owner of controlling interest in said First State Bank & Trust Company, Rio Grande City, Texas, as aforesaid, caused a brother of Judge Carrillo, County Commissioner Ramiro Carrillo, to be elected or appointed to the Board of Directors of said bank, and annually thereafter caused Ramiro Carrillo to be reelected to the Board of Directors.

3. On January 27, 1971, Manges purchased a new Cadillac automobile from Riata Cadillac Company in San Antonio, Texas, for the sum of $6,915.55 and delivered or caused said automobile to be delivered to Carrillo, and Carrillo did accept said automobile.

4. During 1971, Defendant Manges permitted Defendant Carrillo to graze his (Carrillo's) cattle on about 1,000 acres of ranch lands Manges owned without charge. Carrillo accepted the lease and pastured his cattle thereon.

5. Defendant Manges, because of his ownership of controlling interest in the First State Bank & Trust Com-

pany of Rio Grande City, Texas, was in a position to cause said bank to make generous loans to Defendant Carrillo, and said bank did, during the years from 1971 through 1973, make numerous loans to Defendant Carrillo, one loan secured by real estate for over $300,000.00 and other unsecured loans totalling over $38,000.00.

6. At some time in the spring of 1971, Defendants Manges and Carrillo entered into an oral grazing lease for a term of three years granting to Judge Carrillo a grazing lease for his cattle on 5,000 to 6,000 acres of ranch lands in Starr County, Texas, with no payment down and with payment to be made at the end of the term in cattle or money, at Manges' option, and subject to cancellation by Manges at Manges' option. Defendant Carrillo accepted the lease and pastured his cattle thereon.

7. Because of the above listed transactions between defendants Manges and Carrillo, the Honorable Magus P. Smith, Judge of the 93rd District Court of Hidalgo County, Texas, but sitting as Special Judge of the 229th District Court of Starr (also Duval and Jim Hogg) County, Texas, ruled on May 21, 1973 in Cause No. 3953 in said 229th District Court, styled *Clinton Manges vs. M. A. Guerra, et al,* that Defendant Judge O. P. Carrillo was disqualified as of February 1, 1971 to sit as Judge in that case wherein Defendant Manges was a party. A true copy of Judge Smith's remarks from pages 338 to 343 of the Record in said cause and the Order of May 21, 1973 are attached hereto for reference and made a part hereof for all purposes.

VII.

The intended and practical effect of MANGES' bestowing these gifts, favors, and things of value on CARRILLO and CARRILLO's acceptance of them, both at the inception of his term of office and while he was per-

forming his duties as Judge, was to bribe Judge CARRILLO and such bribery continued throughout CARRILLO's term of office until he was impeached by the House of Representatives of the State of Texas and convicted and removed from office by the Texas Senate. MANGES and CARRILLO had made a bargain. In return for MANGES' continuing to bestow gifts, favors and things of value upon CARRILLO, CARRILLO, while sitting as Judge of the 229th District Court of Duval County, Texas, would rule as MANGES wished him to rule in cases before his Court in which MANGES was a party or was interested. MANGES' giving of gifts, favors and things of value to CARRILLO and the acceptance of such gifts, favors and things of value by CARRILLO and the understanding between them in consideration of which such transactions were entered into were all acts done in furtherance of the conspiracy here complained of, and, specifically, were acts done by CARRILLO in furtherance of such conspiracy which were not done in the exercise of his judicial jurisdiction.

VIII.

MANGES, having obtained complete stock ownership of DCRC, and having made the above arrangements with CARRILLO, then undertook action to terminate the oil, gas and mineral leases on property owned by DCRC and adjoining property. Plaintiffs herein are the owners, and under the trade name of SIDNEY A. SPARKS, Trustee, the operators of a valid oil, gas and mineral lease on land owned by Exxon Corporation in Duval County, Texas, adjoining DCRC lands, such land being more specifically described as follows, to-wit:

> Eighty (80) acres out of Section 363, more particularly described as the West one-half (½) of the

Southeast one-fourth (¼) of Section 363, J. Poitevent Original Grantee, Certificate 1/371, Duval County, Texas.

Plaintiffs were producing oil under the terms of this lease on or about August 15, 1972, when MANGES, through his solely owned corporation and alter ego, DCRC, filed suit in the 229th District Court of Duval County, Texas, to enjoin production on such lease and on other leases located on lands owned by DCRC. Unlike the other Defendants in that case, however, Plaintiffs in the instant case were producing oil from a lease on land adjoining DCRC lands, a fact which seemed to make little difference either to MANGES or to Defendant CARRILLO. In stating his cause of action in the 229th District Court, MANGES, through DCRC, claimed that the production activities of these operators were polluting DCRC ranch lands and, in a shotgun petition applicable to all Defendants alike, sought to enjoin all production under the terms of all such leases and also sought money damages. CARRILLO, in accordance with MANGES' petition, and pursuant to the agreement MANGES and CARRILLO had heretofore made, entered an order on January 18, 1973 temporarily enjoining production under Plaintiff's lease and such temporary injunction remained in effect until January 23, 1975 when it was dissolved by the 9th Court of Civil Appeals of the State of Texas. Furthermore, CARRILLO was not content to enjoin only pollution, although that was the principal basis of MANGES' complaint, but framed the order so as to enjoin all production under such leases, although a more appropriate injunction could have been drawn.

IX.

CARRILLO, with respect at least to these Plaintiffs, was completely without jurisdiction to enter the order of January 18, 1973, enjoining production under Plaintiff's lease. In the first place, under Texas law, a Court is without jurisdiction to grant relief in an injunction proceeding greater than that relief prayed for by the party seeking the injunction. In the case in the 229th District Court, DCRC had prayed for an injunction prohibiting production, "on property *which Plaintiff owns* in Duval or Webb County, Texas . . .". *Duval County Ranch Company, Inc. v. The Speedman Oil Company, Inc., et al;* Cause No. 8591 in the 229th District Court of Duval County, Texas; Plaintiff's Second Amended Original Petition. (Emphasis supplied) As pointed out above, the land on which Plaintiff's lease is located is not owned by DCRC, but is owned by Exxon Corporation. Thus, CARRILLO's order enjoining production on this lease was completely void for want of jurisdiction.

In the second place, since these Plaintiffs operated a lease on lands adjacent to DCRC, Article 4644, Tex. Rev. Civ. Stat. Ann. (1940) applied and DCRC was required to allege in its Petition and prove that the party to be enjoined was unable to respond in damages before any injunction could lawfully issue. No such allegation was made and no such proof was offered; nonetheless, CARRILLO issued the injunction as prayed for by MANGES, although without legal authority to do so.

Thirdly, since CARRILLO had received the gifts, favors and things of value mentioned above from MANGES, and since he was interested in the outcome of this litigation, as well as other litigation in which MANGES

was a party or was interested, CARRILLO was absolutely disqualified to sit in this case, rendering any official action taken by him, other than ministerial acts, completely void and of no force and effect because CARRILLO, being disqualified, could not lawfully sit as Judge in this case.

X.

Defendant CARRILLO, in partiality to MANGES, and in furtherance of the conspiracy complained of, set the injunction bond required by temporary injunction at the ridiculously low figure of $5,000.00. MANGES, knowing that such a bond would be required, had previously arranged for Defendants MARTENS and DENNIS to participate in this conspiracy by signing as surteies on the injunction bond required by law. MARTENS and DENNIS, being aware of the unlawful purpose of the conspiracy and of the roles played by MANGES and CARRILLO therein, did in fact sign such injunction bond as sureties thereto, which actions in concert with MANGES, CARRILLO and DCRC did aid such conspiracy and damage Plaintiffs as hereinafter alleged.

XI.

The injunction was granted on January 18, 1973, as aforesaid, and Plaintiffs herein gave notice of appeal on that date. Such temporary injunction was dissolved by the Supreme Court of Texas on June 25, 1975, a total of 31 months later. That CARRILLO abused his discretion in the issuance of the temporary injunction has been conclusively determined by the 9th Court of Civil Appeals and the Supreme Court of Texas. However, Judge CARRILLO's actions in this case amount to substantially

more than a mere judicial error and demonstrate, in and of themselves, that Judge CARRILLO was acting in concert with MANGES to deprive Plaintiffs of their leasehold interests by unlawful acts carried on under color of State law. (See *Harry Winslow et al v. Duval County Ranch Company, Inc.*, 519 S.W.2d 217 (Tex. Civ. App. 1975 —writ ref., n.r.e.).

XII.

As a result of this conspiracy, and the unlawful acts complained of above, Plaintiffs would show that the recovery of 13,000 barrels of crude oil was lost as a result of the temporary injunction since other operators producing oil from the same reservoir were not similarly enjoined. The fair market price for production from stripper wells during the injunctive period was Thirteen and No/100 ($13.00) Dollars per barrel and, thus, Plaintiffs were damaged by the lost production in the amount of One Hundred Sixty Nine Thousand and No/100 ($169,000.00) Dollars, plus legal fees and expenses for defending against the suit in the amount of Fifteen Thousand and No/100 ($15,000.00) Dollars, for a total actual damages of One Hundred Eighty Four Thousand and No/100 ($184,000.00) Dollars.

XIII.

Plaintiffs would also show the Court that because of the fundamental nature of the wrongful acts committed by Defendants MANGES, CARRILLO, DCRC, MARTENS and DENNIS, involving not only an interference with the legally protected property rights but also a complete denial of the basic right of all litigants to try their controversies in Courts presided over by fair and impartial

Judges and the right of all citizens to be free from judicial oppression and harassment by Judges already committed to one side of the controversy because of bribery and corruption, that punative damages are appropriate in this case, and that the amount of punative damages for which Defendants MANGES, DCRC, CARRILLO, MARTENS and DENNIS are liable should be fixed at not less than double the amount of actual damages, plus such additional amount the Court may find necessary to cause these Defendants to discontinue such conduct, as well as to discourage others from so acting.

SECOND COUNT

I.

For second count, these Plaintiffs would join a State claim for damages against Defendants DCRC, MANGES, CARRILLO, MARTENS and DENNIS, and in connection therewith would reassert, with the exception of the jurisdictional statement contained in the First Count, the remaining allegations of Plaintiffs' First Count *in haec verba,* as though fully set out herein, and the allegations of the same are incorporated herein by reference for all purposes.

II.

This claim is joined with Plaintiffs' Federal claim under Rule 18 of the Federal Rules of Civil Procedure, and this Court has jurisdiciton of the same under its so-called "pendent jurisdiction" since the parties to the non-Federal claim are identical to the parties in the Federal claim and a common nucleus of operative fact is the basis for recovery in both.

III.

Plaintiffs would show unto the Court that Defendant MANGES, acting by and through DCRC, filed suit against Plaintiffs on August 15, 1972, seeking, among other things, to enjoin Plaintiffs from producing oil, gas, and other minerals under a mineral lease they held on the lands hereinbefore described, which such lands were adjacent to DCRC.

IV.

Plaintiffs further allege that a hearing was held and on January 5, 1973, Defendant CARRILLO, in abuse of his judicial discretion, enjoined these Plaintiffs from "pumping, flowing or producing any petroleum or oil from leases located in Duval County, Texas, from which the aforesaid Defendants have been producing petroleum and oil".

V.

On January 23, 1975, said injunction was dissolved by the 9th Court of Civil Appeals and in that case the Court of Civil Appeals held that the trial court abused its discretion by granting said writ of temporary injunction.

VI.

That by virtue of said writ of injunction production under said lease was suspended from January 18, 1973 until June 25, 1975, a total of 31 months, and that after said injunction was dissolved, an additional 2 months was required to get the wells back into production.

VII.

That during the 33 month period in which the three wells in question were not producing, the reservoir, from which the complainants had been producing prior to the injunction, was mined by other operators who did not come under the temporary injunction issued by the 229th District Court and the recovery of 13,000 barrels of crude oil was irreparably lost as a result of the temporary injunction. The fair market price for production from stripper wells during the injunction period was Thirteen and No/100 ($13.00) Dollars per barrel. Therefore, Plaintiffs were damaged by the lost production in the amount of One Hundred Sixty Nine Thousand and No/100 ($169,000.00) Dollars plus legal fees and expenses for defending against the suit in the amount of Fifteen Thousand and No/100 ($15,000.00) Dollars, or total actual damages in the amount of One Hundred Eighty Four Thousand and No/100 ($184,000.00) Dollars.

VIII.

That Plaintiffs' damages were the direct result of wrongful issuance of the injunction, as aforesaid, and Defendants MANGES, DCRC, and CARRILLO are therefore liable to Plaintiffs for the amount of actual damages suffered.

IX.

Additionally, Defendants MARTENS and DENNIS signed as sureties on the appeal bond of Defendant DCRC, and are therefore liable to Plaintiffs to the extent of their bond and should be ordered to pay said amount to the Claimants herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon a final hearing hereof, these Plaintiffs have judgment for actual damages of One Hundred Eighty Four Thousand and No/100 ($184,000.00) Dollars, punative damages in the sum of Three Hundred Sixty Eight Thousand and No/100 ($368,000.00) Dollars plus such additional sums the Court may fix and that Plaintiffs do have and recover from MARTENS and DENNIS such amount as Defendants MANGES, DCRC and CARRILLO do not properly pay within the provision of said bond, and for costs of Court, and for such other and further relief, both in law and in equity, as Plaintiffs shall show themselves justly entitled.

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THE COURT: Gentelemen, do you wish to present any argument?

MR. SMITH: Your Honor, since that was presented under a bill, we will make no answer to it. I believe the matter, as far as we are concerned, has been adequately taken care of as far as proof. I think the evidence that has come in today has been irrelevant, and I don't believe has touched the matter of the disqualification of Judge Carrillo. I think the sort of thing they are thinking of, that possibly some people agreed to it, or submitted it, does not in any way affect the disqualification. The parties cannot by agreement make him qualified if he is disqualified. Otherwise, I believe our briefs are adequate.

MR. BATES: I have nothing, your Honor.

MR. CHURCH: I have no argument.

THE COURT: Well, gentlemen, it is kind of hard for a Judge to make this decision regarding a fellow Judge, but it is the opinion of the Court that Judge Carrillo is disqualified as of—well, say the first of February, 1971. I don't want my ruling in any wise to prejudice the rights of any of the parties or reflect on anyone. But I feel that the promiscuous—Judge Carrillo, I think, has been honest. I don't think he feels he is disqualified or has done anything wrong. But the fact remains that he unquestionably—the negotiations with reference to the sale of the—or the transfer of the house and lot in Benavides, took place after—that is, it originally took place before he went in office, and was finally consummated after he was in office. Also, there was a

lease on a number of acres of land, I don't know now how many acres—you might say a free lease for a short period of time, I don't remember how long, which would have amounted to a gift. Then the lease on some five or six thousand acres of land at a price of $5,000.00 per year for three years, payable at the end of the term, and also for the right of Mr. Manges to terminate at any time he wished, would be a financial interest that would go with this case. It would be expensive for him to move his cattle. And he would have to pay up what was owing on the lease at that time. Also, Mr. Manges is by far the greatest controlling stockholder of the bank, and the appointment as a director would have been a financial interest to him, even though small in comparison with the amounts involved in this law suit. And then the fact that Mr.—that the bank, in which the litigant, Mr. Manges owned possibly three-quarters interest in it, by far the controlling interest, was making loans to him up to two or three hundred thousand dollars. As I recall, one of the notes, for two or three hundred thousand dollars, was payable in one year, and the fact that the note could easily be demanded to be paid at maturity, or extended at the will of Mr. Manges. All of these things, and other matters, are like the sword of Damocles, hanging over the head of the Judge by a thin hair. I don't see how a person in that predicament could possibly render an impartial judgment. I couldn't. It's bad, but this is a matter that can be raised at any time. It could be raised after judgment, and it would have to be done all over again. It would be just wiped out. If you have another Judge hear it, he could go over this matter, and vindicate the decisions of Judge Carrillo, if that is correct, or render whatever judgment is correct. That is

the reason I don't want in any manner to make any ruling that would in anywise be construed as either ratifying and confirming, or the opposite, holding that there was anything unjust. In my opinion, in other words, what I am saying is I am not accusing—no, that's not exactly the word—I don't mean to hold any of his decisions are not correct. I have no way of knowing that. The fact that they were correct or not correct, in my opinion, does not touch the question of disqualification. It goes to the root of our system itself. Our Courts are under pressure and subject to criticism on many things that are unjust. And our Courts are the very foundation of our system of society. And if our Courts become corrupt, then there is no justice in the land. And where there is no justice in the land, the only recourse is revolution and bloodshed, and then all people suffer. We, as Judges, must be like Caesar's wife, above and beyond reproach. It is hard enough to render justice and meet the criticism of people on decisions we are called on to make that are controversial, without the burden of anything else that can at all be questionable. I like Judge Carrillo. I have always thought a lot of him. He is young, and he is inexperienced on the bench, but he was kind of caught in a web of circumstances that bound him in this particular case. So it will be the judgment of the Court that he is disqualified.

MR. BATES: Please the Court, on behalf of the Receiver, I ask the Court to make findings and conclusions of law, and give such notice as is necessary in open Court at this time, to appeal the judgment.

THE COURT: I don't know whether you can appeal it or not. I hope you can.

MR. BATES: Well, if we can't, we will try the mandamus route.

THE COURT: I hope you can. Either way I decide on this, the appellate Court can decide the opposite.

MR. BATES: Should I make a more formal request than I make now for findings and conclusions, or will that suffice.

THE COURT: I think that will be sufficient. All right, gentlemen, Court is adjourned.

No. 3953

IN THE DISTRICT COURT
229th JUDICIAL DISTRICT
STARR COUNTY, TEXAS

CLINTON MANGES,
Plaintiff

vs.

M. A. GUERRA, ET AL,

ORDER ON MOTION FOR
DISQUALIFICATION OF JUDGE

BE IT REMEMBERED that on the 15th day of January 1973, there came on to be heard before Honorable O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas the motion of defendants, R. R. Guerra and M. A. Guerra that the Judge recuse or disqualify himself from sitting in this cause, and the said Judge O. P. Carrillo, after hearing testimony, evidence and arguments of counsel on said motion, on February 5, 1973 requested Honorable J. R. Alamia, Presiding Judge of the Fifth Judicial Administrative Judicial District to appoint another judge to hear and decide said motion; and the said Judge Alamia appointed the undersigned, Judge Magus F. Smith, Judge of the District Court of Hidalgo County, 93rd Judicial District to hear and decide said motion; whereupon, hearings were held thereon by the undersigned Judge on the 20th day of February, 1973, March 30, 1973 and April 23, 1973, at the conclusion of which hearing said movants R. R. Guerra and M. A. Guerra, rested, as did the Plaintiff, Clinton Manges, who

opposed said motion. The Plaintiff, Clinton Manges was given until May 7 to answer briefs filed by movants, and the movants were given until May 14 to file a rebuttal brief, after which the matter was submitted for decision. On May 11, 1973, the Receiver, James S. Bates filed a motion to re-open the hearing for additional testimony, which motion was set down for hearing on Friday, May 18, 1973, and on such date the motion was heard and granted.

IT IS THE OPINION OF THE COURT, after considering all of the relevant evidence, the briefs and arguments of counsel, that the law and facts support the motion to disqualify; that the transactions between the Judge and the Plaintiff, Clinton Manges involved the judge with a disqualifying interest in the case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Honorable O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas is disqualified to sit as judge in the above styled and numbered cause as of February 1, 1971.

SIGNED AND ENTERED THIS the 21st day of May, 1973.

/s/ MANGUS F. SMITH
Judge Presiding

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION
CORPUS CHRISTI, TEXAS

CIVIL ACTION No. 76-C-2

SIDNEY A. SPARKS, R. L. LYND, d/b/a
SIDNEY A. SPARKS, TRUSTEE,
Plaintiffs

vs.

DUVAL COUNTY RANCH COMPANY, INC.,
CLINTON MANGES, CLARENCE MARTENS,
ORVILLE E. DENNIS and O. P. CARRILLO,
Defendants

SECOND AMENDED MOTIONS TO DISMISS,
FIRST AMENDED ORIGINAL ANSWER AND
FIRST AMENDED CROSS-CLAIM OF
DEFENDANT, ORVILLE E. DENNIS

TO THE HONORABLE DISTRICT COURT:

Now Comes ORVILLE E. DENNIS, one of the Defendants herein and for answer to Plaintiffs' First Amended Complaint would respectfully show the following:

I.

The Plaintiffs have failed to state, in their asserted "First Cause of Action" in their First Amended Complaint, a claim against this Defendant under 42 U.S.C. Section 1983 for the reason that Plaintiffs allege no facts which implicate this Defendant in any alleged conspiracy to deprive Plaintiffs of their alleged civil rights. Plaintiffs

have only alleged the fact that this Defendant lawfully acted as surety on a bond given to a State of Texas District Court proceeding pursuant to the laws and rules of civil procedure of the State of Texas.

Further, by their First Amended Complaint, they merely repeat their allegations made in the Original Complaint and, while altering some phraseology, add nothing substantive to the allegations in their Original Complaint.

Plaintiffs have failed to state in their asserted "First Cause of Action," a claim against this Defendant under 42 U.S.C. Section 1983 because the facts alleged in said "First Cause of Action" establish as a matter of law that this Defendant was not acting under color of state law. The Plaintiffs have included some additional conclusions, but still fail to aver facts supporting a statement of any claim against this Defendant, or any Defendant for that matter, under 42 U.S.C. Section 1983. Plaintiffs still fail to allege any facts which implicate this Defendant in any alleged conspiracy to deprive Plaintiffs of their alleged civil rights.

In fact, from their allegations, it is uncontroverted that the whole scheme of conspiracy hinges on the conduct of O. P. Carrillo as State District Court Judge, made immune under the law and specifically excluded from the ambit of 42 U.S.C. 1983. Thus, even assuming their conclusionary allegations as true, for the purposes of argument, Plaintiffs only establish that, while acting in alleged concert with Judge O. P. Carrillo, Defendant Dennis was not acting under color of state law because Carrillo was not acting under color of state law as that concept has been applied by the courts in construing 42 U.S.C. Section 1983.

WHEREFORE, Defendant ORVILLE E. DENNIS, prays that the alleged "First Cause of Action" in Plaintiffs' First Amended Complaint be dismissed as to this Defendant and/or this Court proceed no further as to this Defendant with respect to said asserted "First Cause of Action" in Plaintiffs' First Amended Complaint.

II.

Subject to the above and foregoing Motion, and without waiving same, Defendant moves that the "second count" of Plaintiffs' First Amended Complaint be dismissed because the United States District Court for the Southern District of Texas has no jurisdiction of the subject matter of the second count in Plaintiffs' First Amended Complaint nor jurisdiction of this Defendant as to such subject matter for the reason that Plaintiffs allege therein a claim often referred to as that for "wrongful injunction" whereby the Plaintiffs seek damages against the named several Defendants, including seeking damages against this Defendant on the injunction bond. Defendant would show the Court that it has no jurisdiction over the claims asserted in the said "second count." These are claims cognizable in state court, if at all. No federal law or federal question is involved. Further, Plaintiffs do not allege, nor is there, diversity among the parties.

Furthermore, this Court does not have pendent jurisdiction over the claim alleged by Plaintiffs in their "second count."

WHEREFORE, Defendant, ORVILLE E. DENNIS, prays that Plaintiffs' First Amended Complaint be dismissed as to the "second count" asserted therein and that

this Court proceed no further as to the Defendant with respect to the subject matter of the "second count" of Plaintiffs' First Amended Complaint.

III.

Subject to and without waiving the above and foregoing, Defendant, in answer to Plaintiffs' First Amended Complaint, would show the Court as follows:

1. Defendant denies all allegations in paragraph I, first cause of action.
2. Defendant admits that he resides within the District and Division of this Court, but denies that he is a resident of Jim Wells County, Texas. Defendant is a resident of Nueces County, Texas. With respect to all other allegations made by Plaintiffs in paragraph II, first cause of action, Defendant can neither admit nor deny the allegations of Paragraph II, "first cause of action" because he does not have any reliable information in that regard.
3. Defendant denies that he was involved in any way with any alleged conspiracy to deprive Plaintiffs of any rights, privileges and immunities under the Constitution and laws of the United States. As to the other allegations in paragraph III, first cause of action, Defendant can neither admit nor deny said allegations because he does not have any reliable information in that regard.
4. Defendant can neither admit nor deny the allegations of Paragraphs IV through IX, first cause of

action, because he does not have any reliable information in that regard.

5. Defendant can neither admit or deny the allegation in paragraph X, first cause of action, that the injunction bond of $5,000.00 was low or high. Defendant denies that he signed the $5,000.00 injunction bond to aid anyone in any alleged unlawful purpose. Further, Defendant denies that in signing said injunction bond that he knowingly and intentionally aided in any alleged conspiracy. Defendant has no knowledge of any conspiracy by anyone to damage Plaintiffs. Anyone conforming with the laws and rules of civil procedure of the State of Texas had the lawful right to, and could, have performed as a surety on the $5,000.00 injunction bond. Plaintiffs allege no facts which raise or state any claim or cause of action as to this Defendant for any unlawful conspiracy to deprive Plaintiffs of any rights.

6. Defendant can neither admit nor deny the allegations of Paragraphs XI and XII, First Cause of Action, because he does not have any reliable information in that regard.

7. Defendant denies committing any wrongful act as alleged in paragraph XIII, First Cause of Action. As to all other allegations in said paragraph XIV, Defendant can neither admit nor deny any of them because he does not have any reliable information in that regard. Defendant denies any liability for any punitive damages to Plaintiffs.

8. Defendant can neither admit nor deny the allegations of Paragraphs I through VIII, Second Count,

because he does not have any reliable information in that regard.

9. With respect to the alegations of Paragraph IX, Second Count, Defendant denies signing as surety any "appeal" bond for Co-Defendant DCRC in the injunction suit to which Plaintiffs apparently refer. Defendant denies any liability to Plaintiffs on any such bond. Further, Defendant denies any liability to Plaintiffs on the $5,000.00 injunction bond which Defendant signed as a surety along with Co-Defendant, Clarence Martens.

FIRST AMENDED CROSS-CLAIM AGAINST DEFENDANT, DUVAL COUNTY RANCH COMPANY, INC., AND AGAINST DEFENDANT, CLINTON MANGES

For a Cross-Complaint against Co-Defendants, Duval County Ranch Company, Inc., and Clinton Manges, this Defendant, ORVILLE E. DENNIS, alleges that any liability he may have because of the foregoing allegations of Plaintiffs is only that of indemnitor, as surety on the $5,000.00 injunction bond in the state court injunction proceedings of which Plaintiffs complain, and that Co-Defendants, Duval County Ranch Company, Inc., and Clinton Manges, are primarily liable, if at all. Should damages be awarded against this Defendant, then this Defendant prays that he have judgment for indemnity against the Defendants, Duval County Ranch Company, Inc., and Clinton Manges.

WHEREFORE, PREMISES CONSIDERED, Defendant ORVILLE E. DENNIS, prays to the Court that on hearing hereon that the "First Cause of Action" asserted

in Plaintiffs' First Amended Complaint be dismissed as to this Defendant for failure to state a claim and or that the "Second Count" asserted in Plaintiffs' First Amended Complaint be dismissed for lack of subject matter jurisdiction; but that if there be any trial hereon, that Plaintiffs take nothing as against this Defendant and that this Defendant be discharged and recover his costs from Plaintiffs; but that, further, if Plaintiffs recover anything from this Defendant, then this Defendant should be fully indemnified by the Co-Defendants, Duval County Ranch Company, Inc., and Clinton Manges, to the full extent of this Defendant's liability to Plaintiffs, if any; and this Defendant prays for such other and further relief, special and general, in law and in equity, to which he may show himself entitled.

Respectfully submitted,

By_____

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OF COUNSEL:

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ORDERS, OPINIONS AND JUDGMENTS PRINTED IN APPENDIX IN PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 1, 1980
(abbreviated herein as "Pet. App.")

1. Order of the United States District Court for the Southern District of Texas, dated December 17, 1976, ordering that claims against Defendants (including Petitioner) be dismissed for failure to state a claim upon which relief can be granted — See Pet.App.,A1

2. Judgment entered by the United States District Court for the Southern District of Texas, filed on December 20, 1976, in favor of Defendants (including Petitioner) against Sidney A. Sparks, et al — See Pet.App.,A4

3. Per Curiam Opinion of the United States Court of Appeals for the Fifth Circuit, dated January 17, 1979, affirming District Court — See Pet.App.,A5

4. Opinion on Rehearing en banc of of the United States Court of Appeals for the Fifth Circuit, dated October 22, 1979, affirming District Court in part and reversing in part (as to Petitioner) — See Pet.App.,A11

5. Judgment of the United States Court of Appeals for the Fifth Circuit dated October 22, 1979, affirming in part and reversing in part (as to Petitioner) the judgment of the District Court	See Pet.App.,A41
6. Order of the United States Court of Appeals for the Fifth Circuit, dated December 14, 1979, denying Petition for Rehearing (filed by Petitioner)	See Pet.App.,A43

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Appendix have been deposited with the United States Postal Service, with proper first-class postage affixed thereto, certified mail, return receipt requested, addressed to the counsel of record for the Respondents, as follows: Mr. Garland Smith, P. O. Drawer 1104, Weslaco, Texas 78596 on the _____ day of May, 1980.

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